



COMMONWEALTH of VIRGINIA

Office of the Governor

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

P.O. Box 1475
Richmond, Virginia 23218

(804) 786-0044
Fax: (804) 371-8333
TTY: (804) 786-7765

May 23, 2005

To: Merritt L. Cogswell
State Internal Auditor

From: W. Tayloe Murphy, Jr.
Secretary of Natural Resources

Through: The Honorable William H. Leighty
Chief of Staff to the Governor

Subject: Response with Corrective Action Plan to State Employee Fraud, Waste and
Abuse Hotline Report dated April 29, 2005

Introduction

The provisions of Title 29.1 of the Code of Virginia, as amended, ("the Code") create the Department of Game and Inland Fisheries as a "Supervisory Agency" as that term is defined in Title 2.2 of the Code. The definition is set forth in Section 2.2-2100 which provides, in part:

"A board, commission, or council shall be classified as supervisory if it is responsible for agency operations including approval of requests for appropriations. A supervisory board, commission, or council appoints the agency director and ensures that the agency director complies with all board and statutory directives. The agency director is subordinate to the board. . . ."

The applicable provisions of Title 29.1 empower the Governor to appoint the members of the Board of Game and Inland Fisheries ("the Board"), all of whom serve at his pleasure even though each is appointed for a fixed term. The Code further provides that all matters relating to disciplinary action, appointment and removal of the Director of the Department of Game and Inland Fisheries ("the Director") rest with the Board. The Director reports directly to the Board, not the Governor. The Code confers upon the Director all power to manage and discipline the other employees of the Department of Game and Inland Fisheries ("the Department"). In the case of international travel the state regulations require the approval of the Secretary under whom the agency is listed in the Code even in cases where the agency is classified as supervisory.

CONFIDENTIAL
STATE EMPLOYEE HOTLINE
DOCUMENTS

The State Employee Fraud, Waste and Abuse Hotline Report dated April 29, 2005 ("the Audit Report") contains recommendations that fall into three categories. They are: (1) recommendations that suggest action to be taken by the Governor; (2) recommendations that require Board action; and (3) recommendations that require action by the Director.

Numerous letters to the Governor and the Secretary of Natural Resources ("the Secretary"), as well as media coverage of the Department, have called for the dismissal of the Director and named employees of the Department based on allegations which have been investigated by the State Internal Auditor ("the Auditor"), and which are discussed at length in the Audit Report. Neither the Governor nor the Secretary has the statutory authority to take such action. It is generally understood that as a principle of law it is improper to take action indirectly that by law cannot be taken directly. Since the Governor does not have the power to appoint the Director, he does not have the authority to take the suggested action against the Director. Moreover, the Board does not have the statutory power to take disciplinary action against the classified employees whose names have appeared in the letters and articles mentioned above.

The Audit Report requests a written response with a corrective action plan by May 27, 2005. This response and the corrective action that is planned recognize the respective powers of the Governor and the Secretary, the Board and the Director, and every effort has been made to avoid any usurpation of the powers and responsibilities delegated in the Code to these respective authorities. Although the Secretary has prepared this response, in consultation with members of the Board and the Director, the responsibility for implementing many of the Auditor's recommendations rests with the Board and the Director. Moreover, some of the recommendations contained herein would require the approval of the General Assembly.

This response with a corrective action plan focuses primarily on the actions to be taken pursuant to the recommendations contained in the Audit Report in order to assure that future activity at the Department is appropriate and above reproach. It does not attempt to refute any of the Findings of Fact that may be considered to be insignificant. Moreover, a full and balanced legal review of all the findings and recommendations in the Audit Report are not possible within the time allowed for the preparation of this response. Therefore, in many cases the corrective action plan calls for the development of new policies, or the review, and possible revision, of existing policies. The commitment to review and/or revise any particular policy does not, in and of itself, constitute a determination that the past practices of the Department have been deficient.

Gubernatorial Action

If both the Board and the Director were appointed by the Governor, as is the case with all other regulatory agencies within the Secretariat of Natural Resources, the Governor and the Secretary would have greater oversight over the day-to-day operations of the Department because the Director would then report directly to the Governor through the Secretary. Accordingly, it is recommended that the Governor cause legislation to be introduced at the 2006 session of the General Assembly that would accomplish the following:

(1) Change the classification of the Department from a "Supervisory Agency" to a "Policy Agency" as the latter term is defined in Section 2.2-2100 of the Code that provides:

"A board, commission or council shall be classified as policy if it is specifically charged by statute to promulgate public policies or regulations. It may also be charged with adjudicating violations of those policies or regulations. Specific functions of the board, commission or council may include, but are not limited to, rate setting, distributing federal funds, and adjudicating regulatory and statutory violations, but each power shall be enumerated by law. Policy boards, commissions or councils are not responsible for supervising agencies or employing personnel. They may review and comment on agency budget requests."

By changing the classification of the Department, supervisory responsibilities of the agency would be transferred from the Board to the Governor and the Secretary. This would empower them to take such action as may be necessary to address many of the Findings of Fact that are set forth in the Audit Report. Under the current arrangement the Governor's supervisory authority is confined to the Board that meets only on a quarterly basis making it difficult to address issues that arise when the Board is not in session. Moreover, the Chairman of the Board has no statutory authority to undertake supervisory responsibilities unilaterally.

(2) Amend Section 29.1-103(1) of the Code to remove the authority of the Board to appoint the Director, and amend Section 29.1-109 (B) of the Code to confer upon the Governor the authority to appoint the Director. The change in classification of the Department would require these additional changes to the Code; however, a thorough and careful review of all of the provisions of Title 29.1 of the Code should be conducted to determine if other amendments are necessary to conform to the classification change. Statutory reclassification of the Department would not affect the authority of the Board to adopt regulations governing hunting and fishing within the Commonwealth.

(3) Amend Section 29.1-200(B) of the Code to eliminate the requirement that "[a]ll appointments to sworn law-enforcement positions above the rank of game warden . . . be made by the Director . . . from among the sworn game wardens . . ." except when the Director determines in writing that a "sufficient pool of qualified candidates does not exist within the Department." Since there are less than 200 game wardens within the Department, the number of eligible candidates for the highest-ranking positions is limited. The Auditor has concluded that allegations of improper promotions within the Department are substantiated, at least in part, by the constraints that are placed upon the Director by the provisions of this statute.

(4) Prepare a directive to the Board outlining the Governor's expectations of the members with respect to its statutory responsibility to manage "agency operations." Such directive should remain in force until amended or changed by subsequent Governors, or until such time as the General Assembly changes the classification of the Department to a "Policy Agency." At that time the directive should be amended to reflect any changes required by the classification change. At a minimum the Governor should define the relationship between the Chairman of the

Board and the other members and require periodic reports from the Board regarding new initiatives.

Board Action

(1) The Board shall investigate and consider the circumstances surrounding the allegations relating to the Director regarding employee retaliation (1), personal use of state resources on a trip to Africa (2), and improper use of state resources to edit a video (4) and take such action with regard to the Director as it deems appropriate in its collective judgment.

(2) The Board shall develop a Governance Manual outlining its responsibilities for fiscal management, personnel management, the relationship of the Board with the Secretary of Natural Resources as well as the relationship of members of the Board to the Staff, a Code of Ethics, internal operating rules governing the Chairman and the conduct of meetings. The Manual will also govern the conduct of the members of the Board and serve as an orientation for new members. The Governance Manual shall include the establishment of an Internal Audit Committee that receives recommendations from the agency's internal auditor. In the development of the Governance Manual, the Board shall take into consideration the comments and suggestions contained in the Report of the Auditor of Public Accounts relating to the Secretary of Natural Resources Agencies for the period July 1, 2003, through June 30, 2004. The manual shall be completed by December 31, 2005.

Action by the Director

(1) The Director will investigate the circumstances surrounding the allegations that Colonel Terry Bradbery engaged in employee retaliation (1), made personal use of state resources on a trip to Africa (2), and operated a personal business on state time and using state facilities (24). After having considered the Findings of Fact contained in the Audit Report and the results of his investigation, the Director will take appropriate action according to the Department of Human Resources Management Standards of Conduct Policy 1.60. The Director's action under this paragraph shall be completed by August 1, 2005.

(2) The Director will investigate the circumstances surrounding the allegations that Major Michael Caison made personal use of state resources on a trip to Africa (2), used a state vehicle for personal business (7), misused a state cell phone for personal calls (7), and contributed to the improper use of state resources to edit a video (4). After having considered the Findings of Fact contained in the Audit Report and the results of his investigation, the Director will take appropriate action according to the Department of Human Resources Management Standards of Conduct Policy 1.60. The Director's action under this paragraph shall be completed by August 1, 2005.

(3) The Director will investigate the circumstances surrounding the allegation that Charles Sledd improperly approved use of state resources to edit a video (4). After having considered the Findings of Fact contained in the Audit Report and the results of his investigation, the Director will take appropriate action according to the Department of Human Resources

Management Standards of Conduct Policy 1.60. The Director's action under this paragraph shall be completed by August 1, 2005.

(4) The Director will investigate the circumstances surrounding the allegation that Betty Boyd improperly participated in the operation of a personal business on state time and using state facilities (24). After having considered the Findings of Fact contained in the Audit Report and the results of his investigation, the Director will take appropriate action according to the Department of Human Resources Management Standards of Conduct Policy 1.60. The Director's action under this paragraph shall be completed by August 1, 2005.

(5) The Director will investigate the circumstances surrounding the allegation that Ray Davis improperly used restricted funds for the FLW Bass Tournament (12). The Audit does recognize, however, that this improper use of funds has been corrected. After having considered the Findings of Fact contained in the Audit Report and the results of his investigation the Director will take appropriate action according to the Department of Human Resources Management Standards of Conduct Policy 1.60. The Director's action under this paragraph shall be completed by August 1, 2005.

(6) The Director, in consultation with the Board, will seek review and input from the Auditor of Public Accounts regarding policies necessary for appropriate financial controls. The Agency's fiscal control policies will be comprehensively updated to incorporate those recommendations. In addition the updated policies will include:

- Processes that assure that all agency purchases are consistent with the state financial accounting policy (CAPP Manual) (2,3,G7)
- Establish clear procurement procedures (G5) that include the following:
 - Implement the Board's Procurement Committee recommendations (G5)
 - Procedures and training for AMEX card holders (G5), including establishing appropriate spending limits (3)
 - Documentation and justification for all AMEX purchases (3)
 - Approval processes that are exceptions to standard purchasing procedures (3)
 - Thresholds for review of AMEX purchases (3)
 - Procedures required to establish and justify vehicle purchases (8)
 - An approval process for the purchase of expensive items (2)
 - A specific procurement process for SLAP team purchases (11)
 - Disciplinary procedures for failure to follow state and agency purchasing policies (G5)

The revised policy manual will be completed and approved by the Board by October 30, 2005.

(7) The CAPP Manual disallows the use of state funds for non-uniform clothing but fails to provide a definition of uniforms. It is assumed that this was intended to provide flexibility to meet certain unique needs that may apply to specific agencies. The Department of Game and

Inland Fisheries does have unique clothing needs that are job related. To clarify the expectations regarding agency uniforms a Policy Manual Relating to Uniform Requirements will be established by the Director and approved by the Board (G7). The policy manual will include:

- Standard uniform requirements for sworn officers (13)
- Standard uniform requirements for non-sworn officers (13)
- Standard uniform requirements for SLAP officers (11)
- A process for receiving exceptions to standard uniform requirements for personal items (13)

Because the CAPP Manual does not clearly define uniforms, it is not appropriate to apply a retrospective definition. Consequently, it is not recommended that employees who bought uniform clothing under the practices of the Department at that time be required to reimburse the Agency (3). Any purchases not in accordance with those practices should be reimbursed.

The Policy Manual will be completed by September 1, 2005. The Director will then determine whether standard contracts for certain uniform items can be best provided by a contract considering economies for the state and the needs of the Department (G8).

(8) The Director will develop, and the Board will approve, Policies for Inventory and Control of Equipment, which will include (G7) a process of inventory control including adequate records to show the location and responsibility of Agency equipment valued at greater than \$500 (G6, 3). The policy will be developed and approved by October 30, 2005.

(9) The Director will establish a separate Cost Accounting Code for the SLAP team to be implemented July 1, 2005 (11).

(10) The Director will develop and the Board will approve a Policy for Standard Equipment for its employees (G7). The policy will include:

- Standard equipment to be issued to employees by job category (3), including the SLAP team (11)
- Job related standards for vehicle equipment (G9)
- A formal process for receiving exceptions to standard equipment

The Policy will be developed by September 1, 2005. The Director will determine whether standard contracts for certain equipment items can be best provided by a contract considering economies for the state and the needs of the Department (G8).

(11) The Director will undertake a review of all cell phone plans and usage over the past year. Where the misuse of state provided cell phones for personal calls has resulted in an increased cost to the state, Major Caison (7), and others will be required to reimburse the state for such usage. On the basis of the appropriate use by agency employees, the Director will determine and implement the most economical plan by job category, with clear rules regarding personal use (7). This review will be completed by September 1, 2005.

(12) The Director will develop a formal Policy for Field Testing of Uniforms and Equipment including forms to identify the item being tested, evaluation criteria, test results, evaluator, and recommendation (G7, 14). The Policy will provide for business justification of any decision to purchase field tested uniforms and equipment. The Policy will be completed by September 1, 2005.

(13) The Director or his designee will negotiate with Richmond Athletic Club or other clubs to determine the most economical means of providing appropriate facilities for the Warden's Academy with a goal of eliminating personal memberships, if feasible (25). This will be completed in advance of the next academy.

(14) The Director, in consultation with the Board, will request an audit by the Department of Human Resources Management of its Personnel Policies and Procedures requesting recommendations to update its current practices and policies. The Department will then revise its policies to incorporate appropriate recommendations and to include the following items, as approved by DHRM:

- Appropriate policies and documentation required for lateral role changes. The Department will assess and document the need for the Game Warden Recruiter and Grant's Accountant positions and take appropriate action in accordance with revised policies approved by DHRM and re-advertise, if appropriate (21).
- Appropriate policies and documentation required for upward role changes. The Department will assess and document the status of individuals identified in allegation 22 and take appropriate action in accordance with revised policies approved by DHRM (22).
- Complete the Agency Salary Administration Plan and have it approved and implemented by July 1, 2005 (18).
- Clarify and implement procedures for establishing starting salaries for advertised positions as approved by DHRM (17).
- Clarify implementation procedures for in-band adjustments and other compensation mechanisms provided for in DHRM procedures (20).
- Clarify the proper use of temporary pay increases as provided for in DHRM procedures. SLAP team positions will be re-advertised and filled on a competitive basis to create permanent positions. (23).
- Establish the appropriate role and authority of the Human Resources Director in specific personnel actions (G3).

Revised Practices and Policies will be completed and implemented by October 30, 2005.

(15) The Director will ask the Department of Human Resources Management to audit the hiring decisions in Allegation 6 and make recommendations regarding appropriate action based on the facts of the cases. The Director will implement those recommendations (6) by July 1, 2005.

(16) The Director and the Board will draft and distribute a Policy Regarding Retaliation Against Employees that is consistent with the Governor's Executive Order, clearly prohibiting

retaliation of any kind, including the elimination of the perception of retaliation. This Policy will be incorporated into appropriate agency orientation and training programs. There will be a zero tolerance policy for retaliation with consequences for failing to adhere to the policy as set out the DHRM Standards of Conduct 1.60 (1,G2).

This policy will be prepared and distributed by July 1, 2005.

(17) The Director will review the ratio of Law Enforcement Supervisors to Wardens and will establish a strategy to move toward an optimum ratio by October 1, 2005 (19).

(18) The receipt of money from Mr. Daniel Hoffler for the Africa trip as reported on the Economic Statements of Major Michael Caison, William L. Woodfin, Jr., and Colonel Terry Bradbery does not represent a Conflict of Interest as a matter of law. The Chairman is not in a position to gain any personal interest as a result of his gifts. The Board makes its decisions as a collective body. Nevertheless, the Board will develop a Code of Ethics as part of its Governance Manual to guide appropriate behavior regarding relationships between the Board members and Department staff (5). The Code of Ethics will be developed by December 31, 2005.

(19) The Director will develop and the Board will approve criteria to determine appropriate use of Department media services. Outside requests for creating or editing audiovisual media will be evaluated according to those criteria, which will include charges to be billed to the recipient when appropriate (4). Because there were not previously clear criteria and the Department has provided services to a number of organizations and individuals related to outdoor recreation in the past, and because of Mr. Hoffler's many contributions to the Agency and Commonwealth, DGIF will not seek to bill Mr. Hoffler for reimbursement of charges to edit his video (4). The criteria will be developed by September 1, 2005.

(20) The decision of the Director regarding his appointment as a Game Warden will be left to the discretion of the Director. If the Director chooses an appointment as a Game Warden, he or she will meet all administrative and training requirements. The Chief Law Enforcement Officer reports to the Director, and the process for determining the appropriate management of law officers is at the discretion of the Director (10).

(21) The Director will develop a Policy for Conference Attendance by staff that is consistent with State Travel Regulations and approved by the Secretary of Natural Resources by September 1, 2005. Policies and regulations will be in accordance with the CAPP Manual (16).

(22) In a memorandum to the members of the Board dated October 25, 1998, from Mr. J. Carson Quarles, Chairman, the members were notified that the decision had been made by him and others that "in addition to . . . [Colonel Uerz] attending the meetings as an armed warden, that it would be prudent to have a plain clothes armed warden present at each Board meeting." There was no legal justification for this action and no evidence of any threats to the members of the Board requiring the establishment of an Executive Protection Unit; therefore, it

will cease to exist in its present form immediately. Security at future Commission meetings and other appropriate events will be provided as needed by rotating assignment of available law enforcement officers as determined by the Director (8).

(23) The Director will evaluate the internal auditing needs of the Department and develop a strategy that provides for an adequately active internal auditing function to assess risks and make recommendations to the Director (G4). This strategy shall be developed by September 1, 2005.

(24) The allegations relating to the Board Chairman's private Dove Hunt raise questions with respect to the appropriateness of the Department and its employees to engage in such activities, either as hosts or guests, when such participation involves the use or expenditure of state resources. In a memorandum dated September 13, 2000, from Mr. J. Carson Quarles, the Board Chairman, to Mr. William L. Woodfin, Jr., the Director, Mr. Quarles wrote: "Your duties are not only administrative but also include participation with constituents and other supporters of the department. These duties include the activities of hunting and fishing with those parties. The Board not only encourages, but expects, you to use your department vehicle for these activities" In a subsequent memorandum to Mr. Woodfin dated October 26, 2000, Mr. Quarles authorized the purchase by the Department of an all-terrain vehicle ("ATV"). He reiterated the Board's expectation that the Director's responsibilities include the duty "to hunt and entertain others wishing to enjoy hunting." Mr. Quarles continued the memorandum with the following language: "You should feel free to use this ATV for hunting activities, and you should keep it at your home to make it readily available whenever needed." The mission of the Department and the statement of its powers, all as set forth in Section 29.1-109, do not include the authority for agency personnel to use state resources or employees in their official capacity to "entertain" hunters and anglers, or to participate in private hunting and fishing activities. Accordingly, the Board will develop a policy for the participation of agency employees in non-state activities. The purpose of the policy will be to determine when the use of state time and funds is justified. In particular, the policy will address the appropriate use of state funds at events that are open to the public and those that are by invitation only. The policy will be developed by October 1, 2005 (9).

(25) The Department will not be required to partner with the Game Warden Association as a matter of course. It may partner, at its discretion, when the Director deems the partnership to be of benefit to the state. The appropriate role for the Game Warden Association is as a lobbying group for the interests of its members and not as an adjunct to the Agency (1).

(26) The Director will review the cooperative actions with the U. S. Marshal's Office and assure that activities are of benefit to the state. Future relationships with the office will be evaluated in terms of overall benefit to the Commonwealth. However, the Department does not plan to sever its agreement with the U.S. Marshall's Office as ongoing cooperative relationships with law enforcement agencies can prove critical to more effective response during times of emergency (26).

CONFIDENTIAL
STATE EMPLOYEE HOTLINE
DOCUMENTS

(27) The Director will review the placement of equipment such as ATVs and personal watercrafts ("PWCs") in Region 1 to assure an optimum deployment and eliminate any appearance of personal favoritism. Any changes will be in effect by September 1, 2005 (15).

(28) Mr. Pike and Mr. Shires will file a report with the Office on Commonwealth Preparedness (George Foresman) regarding the Israeli Anti-Terrorism Conference by July 1, 2005 (27). In addition, they will provide training to appropriate agencies as requested by the Office of Commonwealth Preparedness.

Conclusion

A summary of all action that is required to be taken by this Response with Corrective Action Plan is set forth in an "Action Summary" which is attached to, and made a part of, this document.